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1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF PENNSYLVANIA

3 JOHN D. PERKEY and : CIVIL NO. 1:00-CV-1639
4 THERESA M. PERKEY, :
5 Plaintiffs, :
6 V. : MAGISTRATE JUDGE SMYSER
7 RELIABLE CARRIERS, INC., :
8 DANIEL JOSEPH BEMBEN :
9 AND KENT, :
10 Defendants. : CIVIL ACTION

11 Deposition of: ROGER H. OSTDAHL, M.D.

12 Taken by: Plaintiffs

13 Before: Jennifer L. Sirois, Court
14 Reporter, Notary Public

15 Date: January 28, 2003, 3:20 p.m.

16 Place: 920 Century Drive
17 Mechanicsburg, Pennsylvania

18
19 APPEARANCES:

20 IRWIN, MCKNIGHT & HUGHES
21 BY: MARCUS A. MCKNIGHT, III, ESQUIRE
22 FOR - PLAINTIFFS

23 GODFREY & COURTNEY
24 BY: E. RALPH GODFREY, ESQUIRE
25 FOR - DEFENDANTS

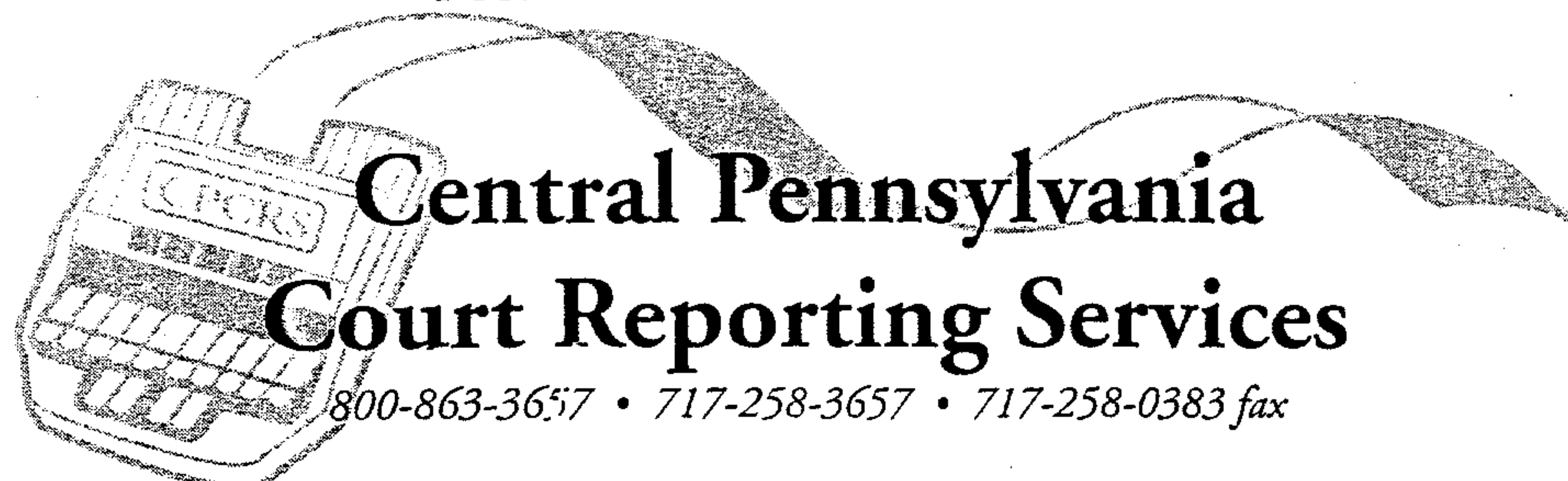


Exhibit A

INDEX TO TESTIMONY

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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1 **ROGER H. OSTDAHL, M.D.**, called as a witness,
2 being duly sworn, was examined and testified as follows:

3
4 MR. MCKNIGHT: Thank you, Doctor, for meeting
5 with us this afternoon. Since this is a deposition that is
6 going to be used at trial, I imagine we'll put all our
7 objections on the record.

8 MR. GODFREY: That's fine.

9 MR. MCKNIGHT: And I think we can, unless you
10 want to, Doctor, you can waive the reading and the signing
11 of your deposition. Is that satisfactory?

12 THE WITNESS: That's satisfactory, yes.

13 **DIRECT EXAMINATION**
14 **(As to qualifications)**

15 BY MR. MCKNIGHT:

16 Q. Would you state your full name for the record?

17 A. My name is Dr. Roger Harold Ostdahl.

18 Q. And your business address?

19 A. My business address is 920 Century Drive,
20 Mechanicsburg, Pennsylvania.

21 Q. And what is your official designation, or what
22 do you do for a living?

23 A. I'm a neurosurgeon. I finished my training in
24 1979 at Duke Medical Center. I was board certified in
25 1981. I've been practicing neurosurgery since 1979.

1 Neurosurgery involves the treatment of conditions affecting
2 the brain, spinal cord, peripheral nerves, pitutary gland
3 and various other supporting elements of the brain and the
4 spinal cord.

5 Q. I have before you a copy of a curriculum vitae.
6 Is that a true and correct copy of it?

7 A. Yes.

8 Q. I notice that you were in the American Field
9 Service. Is that right?

10 A. That's correct.

11 Q. Spend a year in Switzerland?

12 A. Yes.

13 Q. You graduated from Duke Medical School in '79.
14 Is that correct -- or in '73?

15 A. I finished residency training in neurosurgery in
16 1979. I did graduate from Duke Medical School in 1973.

17 Q. Okay. And after your residency, where did you
18 then practice?

19 A. At the completion of my residency, I moved to
20 Pennsylvania, and I've been practicing in the Harrisburg
21 Area since 1979.

22 Q. And I know you said you were board certified in
23 '83. Is that correct?

24 A. 1981.

25 Q. And are you still board certified?

1 A. Yes.

2 Q. And what hospitals do you currently serve on the
3 staff of?

4 A. I currently have staff privileges at
5 PinnacleHealth Systems, which includes Harrisburg Hospital,
6 Community General Hospital, Polyclinic and Holy Spirit
7 Hospital. I'm a consultant at the Rehab Hospital for
8 Special Services health center. I'm a consultant out of
9 Carlisle Hospital.

10 Q. In addition to serving as consultants, do you
11 currently hold any other special positions or
12 chairmanships?

13 A. No.

14 Q. Okay. Are you a member of any medical
15 societies?

16 A. I'm a member of the Dauphin County Medical
17 Society, the Pennsylvania Medical Society, the American
18 Association of Neurological Surgeons, the Congress of
19 Neurological Surgeons, the American Medical Association.

20 Q. And do you serve on the board of directors of
21 the American Trauma Society?

22 A. Yes.

23 Q. And how long have you served there?

24 A. It's been since 1989.

25 Q. Okay. And I notice you've also written a number

1 of articles. Is that correct?

2 A. Yes.

3 Q. And you're married and have two children. Is
4 that also correct?

5 A. That is correct, yes.

6 MR. MCKNIGHT: I'll be offering Dr. Ostdahl as
7 an expert in the field of neurosurgery. If you have any
8 cross-examination on his qualifications --

9 MR. GODFREY: Just a couple quick questions.

10 (Ostdahl Deposition Exhibit No. 1 was marked.)

11 **CROSS EXAMINATION**
12 **(As to Qualifications)**

13 BY MR. GODFREY:

14 Q. Doctor, my name is Ralph Godfrey. I represent
15 the defendants, Reliable Trucking and Mr. Bemben, who Mr.
16 Perkey has got a lawsuit against. Just a quick question,
17 your specialty, the field of neurosurgery, is, I believe
18 you indicated, the spine, brain and there was one other
19 area that you specialize in.

20 A. Neurosurgery encompasses a number of aspects of
21 the brain and the nervous system, spinal cord, peripheral
22 nerves and all the supporting structures of those elements,
23 including the blood supply.

24 Q. And I guess what I'm trying to get at, Doctor,
25 there's been some claims made by Mr. Perkey that there's

1 been injuries to his shoulder and his knees. That would
2 not be in your area of expertise. Is that correct?

3 A. That's correct.

4 MR. GODFREY: No further questions.

5 **DIRECT EXAMINATION**

6 BY MR. MCKNIGHT:

7 Q. Okay. Doctor, are you familiar with a patient
8 by the name of John Perkey?

9 A. Yes.

10 Q. When did you first become his physician?

11 A. I first saw Mr. Perkey as one of his physicians
12 in 1983.

13 Q. And what was the occasion for seeing him on that
14 occasion?

15 A. At that time he was having neck discomfort, pain
16 and numbness involving his right arm. He had been
17 referred, I believe, at that time by Dr. Rychak, and he was
18 admitted to the hospital for some testing, which included,
19 at that time, a myelogram study. That's the first time
20 frame that I became acquainted with Mr. Perkey.

21 Q. So you did some testing. Did you find any
22 particular problems with him at that time?

23 A. Not from a surgical standpoint. He did not
24 require neurosurgical treatment at that time.

25 Q. Did there come a time when he required your

1 services in a surgical sense?

2 A. Actually he was followed and treated for a
3 period of time in a pain management center which I was a
4 part of for a number of years, but he did not require any,
5 or I did not perform any neurosurgical procedures on him
6 until 1990.

7 Q. And at that time, what procedure did you
8 perform?

9 A. In July of 1990, because of difficulties he was
10 having with headaches and left arm numbness related to
11 cervical disc disease, C5-6, in other words, the fifth and
12 the sixth level, he underwent a procedure known as an
13 anterior cervical discectomy and arthrodesis or a fusion;
14 and that was in July of 1990.

15 Q. Okay. And was that surgery successful?

16 A. Yes, it was.

17 Q. Okay. And when was your next surgical treatment
18 of Mr. Perkey?

19 A. The next surgical procedure that I performed on
20 Mr. Perkey was in January of 1995.

21 Q. And what did you do at that time?

22 A. At that time he was having difficulty with
23 left-sided neck pain and pain in the shoulder blade and
24 some tingling and numbness in his left arm. He had been
25 admitted by Dr. Rychak to the hospital for another

1 myelogram and a CT evaluation, and these studies
2 demonstrated an abnormality on the left side of the C6-7
3 level.

4 This appeared to be possibly a soft disc
5 protrusion, and he did have some neurological findings,
6 which that prompted the recommendation for surgery because
7 it was continuing symptoms. He underwent a procedure in
8 January of 1995 which was described as a left partial
9 cervical hemilaminectomy and foramenotomy at the C6-7 level
10 with exploration and decompression of the left C7 nerve
11 root.

12 Q. Now, in laymen's terms, could you tell us what
13 that means?

14 A. What that means is he had nerve root irritation
15 of a particular nerve root, in this case, the C7 nerve root
16 on his left side. At the time of surgery, he did not have
17 a soft piece of disc protrusion, but rather a hard bony
18 spur.

19 We call that an osteophyte, and that was causing
20 pressure on the nerve root. The procedure involved
21 removing pressure from the back of the nerve root which
22 effectively takes pressure off the nerve.

23 Q. Okay. And was that surgery successful?

24 A. Yes, it was.

25 Q. So did you follow him then postsurgery in '95?

1 Did you continue to follow him as a patient?

2 A. I saw him periodically, yes.

3 Q. Could you tell us, did you see him in 1997 at
4 all?

5 A. Yes, I saw him in July of 1997.

6 Q. And at that time, what were you examining him
7 for?

8 A. At that time when I saw him in 1997, I reviewed
9 some of his previous history. He had been having some
10 difficulty with his hands that probably related to a
11 separate condition of carpal tunnel syndrome. And he
12 indicated to me that in early June of that year, he had
13 returned to work in the Pittsburgh Area and he was doing
14 city freight delivery. He was working with a lot of skids
15 at one point.

16 After a few days back at work, he was doing a
17 fair amount of bending, and then he hit a bump on
18 Interstate 79 and had an exacerbation of low back pain as
19 well as neck discomfort and headaches. He indicated at
20 that time that he was waking up at night with some tingling
21 and numbness in his hands and arms.

22 He had some recurrent low back pain and also the
23 neck pain and headaches. He had also had a, I guess
24 recently, prior to my examination, he had had another
25 myelogram and CT evaluation, and this demonstrated some

1 disc and osteophyte disease at the C6-7 level. I did an
2 examination. I don't know if you want me to review the
3 findings of the examination.

4 Q. Sure.

5 A. He did have a fairly full range of motion of his
6 neck with slight limitation of extension and lateral
7 cervical rotation. He had a slight degree of tenderness
8 involving the posterior cervical musculature, which was not
9 particularly severe. He had excellent strength throughout
10 his upper extremities with no evidence of any weakness.

11 He had some diminished sensation with pinprick
12 testing involving the thumb and the three radial fingers of
13 the left hand; that's the thumb, the index finger, the
14 middle finger and the long ring finger. He had a slight
15 degree of sensory change over the thumb and the index
16 finger and the long finger of the right hand. He did have
17 a slight reduction of the left triceps reflex. He did not
18 have a Tinel's sign with either volar or wrist region.

19 My impression at that time was he had chronic
20 lumbar symptoms and had multiple low back operations. He
21 was having some recurrent neck difficulties, which I felt
22 could be related to his disc pathology at the C6-7 level,
23 but I was not eager at that time to perform further
24 surgery. He was having a lot of numbness in his hands at
25 night. I thought he might have recurrent carpal tunnel

1 syndrome difficulties, and I suggested he should have
2 follow-up electrical studies on his hands at that point.

3 Q. So you didn't recommend at that point that he
4 needed surgery to relieve his neck symptoms. Is that
5 correct?

6 A. Yes.

7 Q. How was he treating the pain he was having in
8 his neck? Was it with medications?

9 A. I don't have detailed records. He was being
10 treated by Dr. Rychak. I was seeing him for an opinion at
11 that point in time. I did not feel that he really, at that
12 point, required additional surgery.

13 Q. Okay. So you indicated that in 1997 then when
14 you examined him in July, he had excellent upper body
15 strength and he had full range of motion with his neck at
16 that time. Is that correct?

17 A. Essentially, yes.

18 Q. Okay. When did you next examine him?

19 A. Actually I saw him next in October of 1997 for
20 some further follow-up, and I noted at that time that on
21 the electrical studies of his hands, there had been some
22 slight improvement and some borderline evidence of carpal
23 tunnel syndrome compared with studies from 1995.

24 He was having some continuing difficulties with
25 his neck, was aggravated by his driving over rough terrain.

1 He was tolerating that. He said he was uncomfortable most
2 of the time. There was some discussion with regard to
3 obtaining a further MRI study and some concern about
4 obtaining an MRI study because he had a bone stimulator in
5 his lower back and whether or not the radiologist would be
6 willing to go ahead and do an MRI study.

7 I then had a phone call with Mr. Perkey in
8 November of 1997, and we discussed, again, the situation
9 with regard to his neck and obtaining an MRI study. And I
10 told him I had spoken with several radiologists and also
11 Dr. Rychak, who felt that the bone stimulator could be
12 removed and then we could obtain an MRI of his neck. He
13 was going to wait until after the 1st of the year.

14 Q. So when you examined him in '97, then in October
15 and spoke to him, he was still driving as far as you knew
16 and he was tolerating whatever neck pain he had. Is that
17 correct?

18 A. Yes.

19 Q. When did you next have an opportunity to examine
20 him?

21 A. I next saw him October the 9th of 1998.

22 Q. At that time, what did he relate happened to
23 him?

24 A. He related to me -- I'll read from my records
25 here -- that on September 15, he had been driving his truck

1 and he was involved in another mishap where two large truck
2 tire wheels with a brake drum had come off of an 18-wheeler
3 and rolled off the road and then came back onto the road
4 again just as he was coming around the curve, subsequently
5 striking these wheels of his truck, demolishing the
6 steering axle; the truck swerved toward the right and hit a
7 bank; since that time, he had had increasing interscapular
8 pain or pain between his shoulder blades, increase in the
9 intensity of his headaches; he was having headaches much of
10 the time in the suboccipital region when he was driving; he
11 woke up in the morning with numbness in the two medial
12 digits of each hand.

13 And, again, I had seen him on a referral from
14 Dr. Rychak, who had sent him back and had arranged for MRI
15 studies at that point of the cervical spine prior to the
16 time when I saw him. His MRI study on October the 5th,
17 which was several days before I saw him, demonstrated
18 prominent spondylitis at the C6-7 level with moderate
19 stenosis, prominent bony osteophyte, a solid fusion at
20 C5-6; he had had a thoracic MRI which showed a small disc
21 protrusion at the T2-3 level, which I felt was not
22 particularly significant clinically.

23 He had an MRI of his lumbar spine which showed
24 postoperative changes and changes related to pedicle screws
25 and a wide decompression that he had had performed by Dr.

1 Rychak, I believe. On that point on examination, he did
2 not have any weakness. He had excellent strength through
3 his arms. He did have some numbness with pinprick testing
4 over the medial forearm regions. The deep tendon reflexes
5 were symmetrical, one to two plus.

6 He had discomfort with rotating his neck towards
7 the right side, but not too much with extension or rotation
8 for the other side. And he was quite uncomfortable with
9 regard to his headaches and the pain between his shoulder
10 blades and his upper extremity symptoms.

11 And at that point, we discussed the situation
12 further. He had indicated the headaches that he had
13 previously or prior to his C5-6 disc surgery in 1990 had
14 gone away following that surgery and he was interested in
15 having surgery for the abnormalities at C6-7.

16 Q. Now, as I understand your testimony, when you
17 saw him in '97 he had some neck pain, but he was tolerating
18 it and driving a truck. Is that correct?

19 A. That's correct.

20 Q. And he saw you about three weeks after he had
21 had the accident involving his tractor-trailer that he was
22 driving. What level of pain was he having then, or how did
23 he describe the pain that he was experiencing at that time
24 in his neck?

25 A. He described this as worse. He was having more

1 difficulty with his neck.

2 Q. Upon your examination and your review of the
3 studies that you had available at that time, did you
4 believe that he had injured himself in the accident?

5 MR. GODFREY: Objection. I'll put an objection
6 on the record that any relation to any injury sustained in
7 the accident are outside the scope of any notes or reports
8 provided to me by counsel or from the doctor's notes.

9 BY MR. MCKNIGHT:

10 Q. Go ahead. You can answer.

11 A. Could you ask that again, please?

12 Q. Yes. Upon your examination of him and upon your
13 review of the studies, were you able to determine whether
14 or not he had been actually injured in the accident in the
15 neck area that you were examining?

16 A. Well, he was describing to me that he was having
17 increasing problems. I did not have any independent
18 different information that there were any new injuries
19 related to the cervical spine and the lumbar spine with
20 regard to totally new pathology related to the accident.

21 Q. So what were --

22 A. There were no fractures. There was nothing, you
23 know, different.

24 Q. What were your recommendations in terms of
25 treatment? What did you think would help his situation?

1 A. Well, at that point we talked again about the
2 fact that I thought he was a candidate at that point
3 because of his symptoms for an anterior diskectomy and
4 fusion at the C6-7 level, the level below where he had had
5 the successful fusion previously at C5-6.

6 And he was very willing to proceed with that at
7 the time because he thought there was a reasonable chance,
8 I thought there was a reasonable chance his headaches would
9 improve, especially since the same type of headaches had
10 gotten better after his previous surgery in 1990.

11 Q. Did you schedule that surgery?

12 A. We were in the process of trying to schedule
13 that surgery, and it may have been scheduled, but then it
14 was subsequently canceled because of some denial of a work
15 comp claim. And at that point in time -- I don't have the
16 details -- but in October, there was a note in the chart
17 that he was to call us when he was ready to schedule the
18 surgery, so the surgery that had been scheduled at
19 Polyclinic Hospital was canceled.

20 Q. Was it subsequently rescheduled?

21 A. Yes, it was.

22 Q. And when did that occur?

23 A. I saw him again in the office in April of 1999,
24 prior to that surgery, but that surgery was rescheduled and
25 was performed in May of 1999.

1 Q. When you saw him in your office in April of '99,
2 how was he? What was your examination?

3 A. Well, at that point in time he indicated that he
4 had had shoulder surgery since I had seen him previously;
5 he was continuing to have pain radiating into his right
6 upper extremity, tingling in the small and ring fingers in
7 each hand; he was continuing to have headache difficulties
8 and neck pain; other than some tenderness that he had over
9 the incision at his right anterior shoulder from his recent
10 surgery, his general neurological examination was about the
11 same as it had been previously.

12 Q. Did you still feel he was a candidate for the
13 surgery that you were recommending?

14 A. Yes, I did. He was still having headaches, neck
15 pain. I talked with him about the situation, and he
16 wanted, at that time, to proceed with the surgery that had
17 been previously scheduled and then canceled back in October
18 of 1998. That was scheduled and then performed in May of
19 1999.

20 Q. Now, for the record, explain exactly what it is
21 that that surgery involved. What did you do in May of '99?

22 A. That surgery was very similar to the surgery
23 that he had had back in 1990 with one exception: The
24 operation was performed with an incision in the anterior
25 part of his neck, the left side. The anterior spinal cord,

1 or the anterior spine was exposed. The disc at the C6-7
2 level was removed and pressure was taken off the spinal
3 cord and the nerve roots, especially in the left side at
4 C6-7.

5 A piece of bonebank bone was used for the
6 arthrodesis. The term arthrodesis is to put the bone in
7 place. The fusion occurs over a period of months as the
8 bone fuses. A lot of people call it a fusion when you do
9 the arthrodesis. Technically it's an arthrodesis, and if
10 the fusion successfully occurs, then it's a fusion. In
11 order to increase the situation, because he had had the
12 procedure performed at the level above, to make sure that
13 it fused well, we put in a plate.

14 This is a special plate with screws that gives
15 increased stability to the level where the arthrodesis had
16 been performed at the time of that surgery, so he had an
17 anterior diskectomy with a fusion or arthrodesis and an
18 anterior cervical plate at that time.

19 Q. Now, at the risk of sounding too simplistic, let
20 me ask you, anterior means from the front. Is that
21 correct?

22 A. That's correct.

23 Q. And posterior is from the rear?

24 A. That's correct.

25 Q. And the unusual part of this surgery was you

1 came in from the front to perform this. Is that correct?

2 A. I'm sorry?

3 Q. It was unusual that you came in from the front
4 in this case. Is that correct?

5 A. It wasn't unusual. That's a usual approach.
6 The two different approaches to the cervical spine,
7 depending on the pathology and depending on a number of
8 factors is either from the front, an anterior approach, or
9 from the back, a posterior approach. In this case, the
10 appropriate approach was from the front, which is an
11 anterior approach.

12 Q. Are there any risks associated with surgery like
13 this that you pointed out to Mr. Perkey before he agreed to
14 do it?

15 A. Yes.

16 Q. What are the risks?

17 A. I usually discuss with every patient the risks
18 of this type of surgery. It includes infection; it
19 includes hemorrhage; it includes failure of fusion, in
20 other words, the bone may not fuse and you may develop
21 what's called a pseudoarthrosis, where there's still some
22 movement where there should be a solid fusion if it fuses
23 correctly.

24 There is the risk of paralysis, the risk of
25 damage to the spinal cord; there's risks of damage to the

1 nerves that go to the vocal cords; there's risks of
2 hoarseness, trouble swallowing; medical risks that are
3 unrelated specifically to the surgery, such as, phlebitis
4 or thrombosis or heart attack or dying from some unusual
5 heart stoppage during surgery. These are all unusual
6 things that can occur, but they are inherent risks of the
7 surgery.

8 Q. So after all those warnings, he still went ahead
9 and had the surgery. Is that correct?

10 A. Yes.

11 Q. Okay. What was the result of his surgery? How
12 was it, in your opinion?

13 A. He was better after the surgery.

14 Q. And after you performed the surgery then in May
15 of '99 and followed up, did you have any occasion to see
16 him further for your speciality?

17 A. Yes. He had indicated in June of 1999, for
18 example, in follow-up, his headaches were much better; he
19 also thought the tingling numbness in his arms was better;
20 he did have some temporary difficulties swallowing for a
21 while, but that then got better; his x-rays demonstrated
22 good appearance.

23 Q. You then saw him when?

24 A. I saw him in October of 1999, part of which was
25 for a long-term follow-up of the appearance of the

1 instrumentation and the x-rays of his neck. He had been
2 having some trouble with his shoulder; he had seen Dr.
3 Rychak. He was also having some continuing problems with
4 his low back, and he had had a lumbar myelogram several
5 weeks prior to that visit.

6 And as of that time in October of 1999, he had
7 not returned to work. Then I saw him again later the same
8 month on October 26th of 1999, and that was for a, kind of
9 a second opinion for his low back pain problems that he had
10 for many years and had numerous operations for that.

11 Q. Did you make any recommendations about that?

12 A. I reviewed films. After doing an examination, I
13 felt that there was no structural pathology in his lower
14 back at that time which would particularly benefit with any
15 further surgery.

16 I thought that he might benefit with a good
17 physiatry evaluation, physical therapy measures, possibly a
18 TENS unit for his low back pain. I did not think that any
19 further back surgery would be helpful.

20 Q. And after October of '99, did you follow up with
21 him?

22 A. I saw him again in October of 2000.

23 Q. And what was his condition at that time?

24 A. In October of 2000, October 11th, he returned
25 and he was having some, at that time, some recurrent

1 headaches and neck and shoulder discomfort that had been
2 present for several months. He told me he was no longer
3 driving a truck. He had not been successful in being
4 retrained for a different type of work.

5 He was continuing to have his chronic low back
6 pain difficulties. He had had extensive physical therapy
7 evaluation and treatment of Dr. Lupinacci, a physiatrist,
8 and he had had an MRI study of his neck, which at that time
9 now was demonstrating a new finding, which was stenosis or
10 narrowing of the spinal canal at the C3-4 and C4-5 levels.
11 The appearance on the MRI at the C5-6 and C6-7 levels where
12 he had had surgery before was satisfactory.

13 There was some other social issues that we
14 talked about at that point in time, and his symptoms seemed
15 to be related with his headaches with the stenosis that he
16 had developed above the level where he had the previous
17 anterior fusion surgery. We talked about options,
18 including the option of, in this case, a posterior approach
19 to open up the spinal canal and reduce the pressure on his
20 spinal cord.

21 Q. What causes stenosis?

22 A. Stenosis is a condition that, in the majority of
23 cases -- this may not be germane to this particular
24 case, but I think stenosis is probably a genetic condition.
25 There's probably some gene somewhere that leads the

1 development of stenosis, which is a combination of
2 narrowing of the spinal canal from thickening of ligaments
3 and support tissues, sometimes buildup of bone, bone spurs;
4 sometimes there's congenital, which there's a small spinal
5 canal from birth, and then somebody in that situation is
6 much more vulnerable to even minor other things that can
7 cause pressure on nerve roots.

8 Q. Do you ever see --

9 A. Again, stenosis, as a result of some other
10 factors that can occur -- and one of the things that can
11 occur in the lower back and also in the neck, if you've had
12 previous surgery -- in this case, I think it partially
13 could be related to the fact that he had had the fusion at
14 the lower levels that put extra stress on his spinal
15 structures up in the cervical region. He had not really
16 had much in the way of stenosis prior to that time, so I
17 think that could have been an additional factor.

18 Q. Okay. So you documented stenosis in C3-4 and
19 C4-5. What were your recommendations at that point?

20 A. Given the fact that Mr. Perkey had done well
21 with previous surgery, you know, having headaches and given
22 the stenosis that he had, I felt that he was a candidate to
23 decompress the area of stenosis to relieve his headache
24 difficulty.

25 Q. And did you schedule that surgery?

1 A. Yes, I did. And also I might add that on his
2 pictures, it had become evident that one of the screws that
3 had been placed into the plate at the time of the previous
4 surgery had partially backed out a little bit, and we
5 talked about that as a factor of whether that was
6 significant or not.

7 He decided that he would like to have that screw
8 removed at the time that we did the other surgery, which
9 was kind of a minor addition to the surgery. We did have
10 to open the anterior incision to remove the screw, and then
11 we did the surgery to remove the pressure on the spinal
12 canal at C3 and 4 and 5. That surgery was performed on
13 February the 7th of 2001.

14 Q. And the screw you removed was from the May 1999
15 surgery. Is that correct?

16 A. That's correct.

17 Q. Okay. Did you follow up with him after the 2001
18 surgery?

19 A. I saw him on February the 28th of 2001, and he
20 indicated at that time that he was feeling much better with
21 regard to the numbness in his upper extremities. He was
22 having some mild soreness in his neck musculature. The
23 incisions were well healed. I felt at that time that he
24 could start driving a vehicle again, and he was generally
25 improved.

1 Q. Okay. And is that the last time you met with
2 Mr. Perkey, the last time you examined him?

3 A. As a patient, yes.

4 Q. Doctor, do you feel that the surgeries and the
5 procedures you've used in your surgery, both the May of '99
6 and then February of 2001, do you think those were
7 reasonable and necessary?

8 MR. GODFREY: I'm just going to object that it's
9 outside the scope of any reports or notes.

10 THE WITNESS: Yes.

11 MR. MCKNIGHT: Those are all the questions I
12 have.

13 **CROSS-EXAMINATION**

14 BY MR. GODFREY:

15 Q. Doctor, once again, I'm Ralph Godfrey. I
16 represent the defendants. To help speed this up, I have
17 copied your notes so we can look at those a little bit
18 easier.

19 A. Okay.

20 Q. If you just look at that quickly just to make
21 sure that they are your notes and what we've talked about.

22 A. Okay.

23 Q. They are your notes, Doctor?

24 A. Yes.

25 Q. At the first page, Doctor, I believe you

1 testified that you had started treating Mr. Perkey in the
2 '80s, and the note I'm referring to is July 13th, 1982. Do
3 you see that letter on top, Doctor?

4 A. Yes.

5 Q. And does that accurately, do you believe,
6 reflect that's when you started treating Mr. Perkey?

7 A. Yes, I think it is.

8 Q. Okay. Now, July 13th, 1982, this letter to
9 Thomas J. Green, was that, do you recall if that was
10 Mr. Perkey's family doctor?

11 A. Dr. Green is an orthopedist in Carlisle. He's
12 generally not a family doctor, but I think Dr. Hough, who
13 is a family doctor, was Mr. Perkey's family physician, I
14 believe.

15 Q. So at this time back in 1982, Mr. Perkey was
16 seeing an orthopedist, Dr. Green?

17 A. Yes.

18 Q. Now, in this letter that you've written to Dr.
19 Green, it appears that Mr. Perkey was involved in a motor
20 vehicle accident on June 9th, 1982. Is that correct,
21 Doctor?

22 A. Yes.

23 Q. Okay. And following this accident, Mr. Perkey
24 developed headaches?

25 A. Yes.

1 Q. And, Doctor, is there any indication in here
2 that Mr. Perkey told you that he may have hit his head
3 against the back window in the truck?

4 A. I haven't reviewed this for a while.

5 Q. That's fine, Doctor. Take your time.

6 A. Yes, he indicated that his head hit the back
7 window of the truck in this description of the accident.

8 Q. Okay. And, Doctor, isn't it true that he was
9 complaining to you of having difficulty in the -- and
10 excuse my pronunciation -- suboccipital and upper cervical
11 discomfort?

12 A. Yes.

13 Q. Can you explain to the jury, Doctor, what
14 suboccipital is?

15 A. Suboccipital is the area just at the top part of
16 the neck just underneath the occiput or the back part of
17 the skull. It's a general term for this area of anatomy.
18 It's the upper part of the cervical spine, and the skull
19 rests on top of the cervical spine and the layer of
20 musculature. This is -- and the back of the head or the
21 lower part of the back of the head is what we term
22 suboccipital.

23 Q. If I -- and correct me if I'm wrong,
24 Doctor, but this is actually where the spine and the brain
25 would connect, in that area?

1 A. Yes.

2 Q. Okay. Would this also include the upper
3 cervical area too, or is that a different area, Doctor?

4 A. Well, I said here upper cervical discomfort.

5 Q. He was having transient numbness in his upper
6 extremities after this accident?

7 A. Yes, I have noted that he did notice transient
8 numbness in his upper extremities immediately after the
9 accident.

10 Q. Now, you had prescribed some medication for him,
11 Doctor, one being Darvocet?

12 A. I may have. I don't have a note here though. I
13 indicated that he had been taking medicines including
14 Darvocet.

15 Q. Okay. What is Darvocet?

16 A. Darvocet is a pain medication. It's a mild
17 narcotic medication.

18 Q. And what is Parafon?

19 A. That's probably Parafon Forte. That's a muscle
20 relaxant medicine.

21 Q. Okay. Once again, excuse my mispronunciation,
22 Clinoril?

23 A. Clinoril is a nonsteroidal anti-inflammatory.

24 Q. And just so the jury understands, Doctor, the
25 date of this accident was 9/15/1998. You had been treating

1 Mr. Perkey approximately 16 years, started treating him
2 approximately 16 years before this accident, correct?

3 A. I initially saw him in 1982, that's correct.

4 Q. And I believe your diagnosis in 1982 was
5 cervical musculoligamentosis?

6 A. That was a mild cervical musculoligamentosis, in
7 other words, the muscles and the ligaments were strained.
8 There was a musculoligamentous strain at that time.

9 Q. Okay. And I believe next you saw him August
10 10th, 1982, and at that time Mr. Perkey complained to you
11 that he had driven approximately 500 miles. And I
12 quote -- and correct me if I'm wrong, Doctor -- quote, in
13 your notes he states that, every time I went over a bump, I
14 would experience a severe sharp pain at the base of my
15 neck. Once again, Doctor, he's continuing to have these
16 intermittent pains in his lower posterior cervical region
17 as well as the occasional headaches, correct?

18 A. That's correct.

19 Q. And lower posterior, from what you had testified
20 earlier, would be the back part of the neck, correct?

21 A. That's correct.

22 Q. Okay. And I see, Doctor, you saw him again
23 September 28th, 1982, and I believe there's an indication
24 that he had fallen and fractured his wrist at that time?

25 A. Yes.

1 Q. Now, October 19th, 1982, Doctor, Mr. Perkey
2 indicated to you that he was, quote, doing worse?

3 A. Yes.

4 Q. That he's had increased headaches?

5 A. Yes.

6 Q. And that they are, basically these headaches are
7 occurring every day and then also often more than once a
8 day?

9 A. Yes.

10 Q. And it goes on to state that these headaches are
11 aggravated by activity?

12 A. Yes.

13 Q. Okay. And you prescribed a TENS unit?

14 A. I prescribed a four-lead TENS unit.

15 Q. What is a TENS unit, Doctor, for the jury?

16 A. A TENS unit is a device that works with the
17 concept of electrical stimulation. There's an electrical
18 current which passes through soft tissues, in this case,
19 muscles and other soft tissues, and the effect of the TENS
20 unit in many cases is to alleviate discomfort. It can be
21 helpful for headaches; it can be helpful for back pain or
22 neck pain.

23 Q. And, again, he was taking the Darvocet?

24 A. Yes.

25 Q. Okay. Now, on January 28th, 1983, I see, once

1 again, that you met with Mr. Perkey. Is that correct?

2 A. Yes.

3 Q. Okay. And I believe there, once again, he
4 complains that he's driving truck and he drives over 250
5 miles to Albany and, once again, he's got a subsequent
6 recurrence of his severe neck discomfort and headaches?

7 A. Yes.

8 Q. Okay. So would you agree with me, Doctor, that
9 it was driving the truck that brought on this discomfort
10 from what Mr. Perkey had told you?

11 A. Yes.

12 Q. Now, on February 22nd, 1983, Mr. Perkey returns
13 to your office with the continuing problems that he's
14 having with his job of long distance over-the-road
15 trucking. Is that not correct?

16 A. I'm sorry. What was that date?

17 Q. February 22nd, the next note, Doctor.

18 A. Okay.

19 Q. Mr. Perkey returns to your office for a
20 follow-up, and, again, he states that he's having
21 difficulties being a long distance over-the-road
22 truckdriver. Is that correct?

23 A. That's correct.

24 Q. Okay. And that he is having cramping pain in
25 his right paracervical region?

1 A. Yes.

2 Q. What's the paracervical region, Doctor?

3 A. It's the side of the neck, in other words, the
4 muscles on either the -- not the midline, but the side of
5 the neck, in other words, on the back or the front.

6 Q. Okay. And as of February 22nd, 1983, did you
7 have any suggestion to Mr. Perkey about discontinuing his
8 truckdriving?

9 A. I have a note here from that date that I had a
10 long discussion with him. I thought that it would probably
11 be appropriate for him to discontinue his truckdriving for
12 the present time due to his continued difficulties.

13 Q. And those continued difficulties would be the
14 neck discomfort and headaches due to the ongoing trucking,
15 correct?

16 A. That's correct.

17 Q. Now, on February 24th, 1983, you authored a
18 letter to John Sabol. Is that correct, Doctor?

19 A. I'm sorry. February what?

20 Q. 24th, 1983. It's a letter to Mr. John R. Sabol.

21 A. I don't have a copy of that.

22 Q. Let me show you, Doctor. And all I'm asking
23 here, Doctor, is that basically you had recommended that he
24 take a light-duty job at that time and not do trucking,
25 correct?

1 A. Yes. That's a description of what I thought
2 might be appropriate for him.

3 Q. And you had put a weight restriction of 50
4 pounds on him?

5 A. Yes.

6 Q. And limited his working to 8 hours a day?

7 A. Yes.

8 Q. Okay. Thank you, Doctor.

9 A. And that he should avoid 10-hour plus stretches
10 in the truck.

11 Q. Okay. Thank you, Doctor. Now, despite your
12 recommendation there -- you met with Mr. Perkey on March
13 23, 1983 -- was he continuing to drive? I'll show you my
14 notes, Doctor, which is a copy of your note. Did
15 Mr. Perkey continue to drive despite your recommendation of
16 doing light duty?

17 A. I noted, he is continuing to drive at his job
18 and he just returned from a long trip.

19 Q. So at this point, as of March 29th, 1983, he's
20 disregarded your recommendation and is continuing to drive,
21 correct?

22 A. I don't know that he's disregarding my
23 recommendation. I don't know that he had an option.

24 Q. Okay. Let me ask you this: At that point,
25 Doctor -- let me restate the question. As of March 29th,

1 1983, your notes indicate that he had just returned from a
2 long trip. Is that correct?

3 A. That's correct.

4 Q. Okay. Now, Doctor, on April 12th, 1983, you
5 wrote a letter to Mary Claire Hull. Do you have that
6 letter, Doctor?

7 A. Yes.

8 Q. And in that -- I'm referring to the second
9 paragraph, Doctor -- you indicate that Mr. Perkey's
10 prognosis -- and this was dealing with the cervical
11 musculoligamentous strain -- his prognosis is guarded with
12 regard to full recovery to return to truckdriving without
13 symptoms. Is that correct, Doctor?

14 A. That's correct.

15 Q. And at this point in time, as of April 12th,
16 1983, Mr. Perkey has severe intermittent neck discomfort
17 associated with truckdriving?

18 A. Yes.

19 Q. Now, in your May 3rd, 1983 note, you make a note
20 there, Doctor -- and do you have that in front of you, May
21 3rd, 1983?

22 A. Yes.

23 Q. That I believe this is the first time that you
24 were made aware that Mr. Perkey's actually also being
25 treated by Dr. Rychak?

1 A. I made a note here that he had been receiving
2 diagnostic and therapeutic measures of which I was unaware.
3 I don't recall whether or not I knew that he had seen Dr.
4 Rychak specifically.

5 Q. Do you make any other notes or mentions in that
6 office as to what's going on in that time period?

7 A. No.

8 Q. The last sentence there, Doctor, could you read
9 that to the jury, please?

10 A. Mr. Perkey has apparently asked for a very large
11 settlement on a disability claim.

12 Q. Okay. Now, on June 15th, 1983, did Mr. Perkey
13 ever contact you regarding any problems that he had with
14 numbness or tightness in his neck or shoulders?

15 A. I'm sorry. What was the date?

16 Q. June 15th, the next note, Doctor.

17 A. The next note was by one of my nurses at the
18 time.

19 Q. And that would be Carol A. Lewis?

20 A. Carol A. Lewis. He had called, and she recorded
21 that he had indicated that he was digging holes for fruit
22 trees and developed pain in his right arm and some numbness
23 and tightness in the muscles in the neck and the shoulder.

24 Q. And just to elaborate on that, Doctor, your July
25 14th note, which was authored by you, Mr. Perkey complains

1 at this time of right upper extremity problems, generalized
2 weakness. Is that correct?

3 A. After he would chop wood, for example, or
4 perform other strenuous physical exercise with his right
5 arm, he would experience numbness and generalized weakness
6 in his entire right arm.

7 Q. So as far back as 1983, July 14th, 1983, Mr.
8 Perkey had reported to you numbness and generalized
9 weakness in his right arm, correct?

10 A. Yes.

11 Q. Now, moving to September 13, 1983, you, once
12 again, authored a letter to Mr. Epley (phonetic) and
13 Mr. Sabol. Once again, just so the jury would be aware, at
14 that time Mr. Perkey's primary complaint was numbness in
15 his right upper extremity or his right arm, correct?

16 A. Yes.

17 Q. Okay. And what is a diffuse numbness, Doctor?

18 A. A diffuse numbness is a generalized numbness, in
19 other words, it involves most of the arm as opposed to a
20 specific numbness in a particular finger or particular area
21 of the arm. If it's a diffuse, it involves the entire arm.

22 Q. And as a result of these problems that he was
23 having with his right arm, Doctor, I believe you
24 recommended that he be admitted to the hospital?

25 A. Yes. I felt it would be appropriate to admit

1 him to the hospital for a myelogram and for some electrical
2 studies. At that point in time, myelograms were performed
3 as an inpatient in the hospital.

4 Q. Now, as far back as September 20th, 1983, you
5 made a note about a phone call. Can you tell me what that
6 phone call was September 20th, 1983?

7 A. I have a note here that says, I discussed
8 Mr. Perkey's overall situation today with Attorney McKnight
9 in Carlisle.

10 Q. Okay. Now, as of October 3rd, you have a letter
11 that you wrote to Mr. Moncrief -- I believe is how you
12 pronounce his name -- about your diagnosis that Mr. Perkey
13 was having chronic headaches?

14 A. Yes.

15 Q. Okay. What do you mean, Doctor, by chronic?

16 A. Longstanding.

17 Q. Okay. Now, you also make note in here that
18 Mr. Perkey's been complaining of continuing difficulties
19 with generalized numbness and weakness of the right arm
20 after performing strenuous physical exercises and while
21 driving his truck on occasion. That's correct, Doctor,
22 isn't it?

23 A. Yes.

24 Q. And he continued to have the neck discomfort?

25 A. Yes.

1 Q. Now, as of 1983, is there any mention of any
2 lower back pain or problems that Mr. Perkey's having?

3 A. In October of 1983, I have a statement there
4 that he has been having some symptoms of low back
5 discomfort, which I felt was attributable to the myelogram,
6 but they should resolve.

7 Q. How about any, did you recommend any type of
8 psychological or family counseling or evaluation for Mr.
9 Perkey as of this date in 1983?

10 A. Yes.

11 Q. Why did you request a psychological evaluation?

12 A. A psychological evaluation is kind of a standard
13 part of any multidisciplinary pain management programs. I
14 thought that he might benefit from a kind of
15 multidisciplinary, by that, different disciplines brought
16 to bear, one of which is a psychological evaluation; one of
17 which is a physical evaluation, different types of
18 treatments, different approaches to deal with the chronic
19 pain problem that he was experiencing.

20 Q. Doctor, just so the jury's aware, we're going
21 over these notes, but wouldn't you agree with me that Mr.
22 Perkey has had a very long history of neck and back
23 problems?

24 A. Yes.

25 Q. Now, back in 1983, you were asked to do a

1 surgeon's report. Do you have that, Doctor? And just a
2 couple quick questions, Doctor, regarding -- you do have
3 that note, Doctor?

4 A. This is a copy of what's termed a surgeon's
5 report, yes.

6 Q. Correct. And that's signed by you?

7 A. Yes.

8 Q. And I'm looking under disability. You have
9 patient, and then there's, will be/was able to resume
10 regular work, and you have indefinite, correct?

11 A. Yes.

12 Q. And then I'm also at 21, resume light work, and
13 you have indefinite?

14 A. Right.

15 Q. So at that point in time, you did not feel that
16 Mr. Perkey was able -- or you had taken him off work -- let
17 me ask you that -- as of 1983?

18 A. I believe so, yes.

19 Q. And that was due to, I believe, looking at line
20 5, due to a truck accident that occurred on June 9th, 1982?

21 A. It says, state in patient's own words where and
22 how accident occurred or occupational disease was caused.
23 It says, truck accident, June 9, 1982.

24 Q. Okay. And just so we're aware, the next thing,
25 Doctor, attending physician's report, your diagnosis was

1 chronic headaches, cervical radiculopathy?

2 A. I'm not sure what --

3 Q. The attending physician's report, Doctor,
4 looking down section -- it says, diagnosis and concurrent
5 or contributing conditions.

6 A. Yes, chronic headaches, cervical radiculopathy.

7 Q. Now, Doctor, just as of December 13th, 1983,
8 Mr. Perkey tells you that he's still having some discomfort
9 with his right upper extremity? And I'm referring to the
10 second paragraph, Doctor, last sentence.

11 A. Yes, he was, correct.

12 Q. Okay. Doctor, in your May 17th note, you talk
13 about Mr. Perkey having soreness in his right trapezius.
14 What is the right trapezius region? And I'm referring to
15 your May 17th, 1984 note.

16 A. The trapezius musculature is the large muscle in
17 the posterior aspect of the shoulder and the upper back.

18 Q. Just so I understand, Doctor, the back part of
19 the shoulder and back --

20 A. This is the trapezius muscle. The large muscle
21 that forms the back part of the upper shoulder across the
22 back.

23 Q. Since the jury can't see you, Doctor, it's the
24 muscle that comes from the neck over the shoulder, or over
25 the upper part of the arm into the shoulder?

1 A. And back down the back.

2 Q. Okay. Have you ever given a deposition for
3 Mr. Perkey prior to the one today?

4 A. I believe so, yes. Yes, I found a note of it,
5 May 17, 1984.

6 Q. And that would be regarding the complaints he
7 was having around in the early '80s, correct?

8 A. I would assume so, yes.

9 Q. Now, as of July 16th, 1984, did you recommend
10 that, or did you advise Mr. Perkey that he should resume
11 work activities on a dock rather than driving?

12 A. Yes.

13 Q. As it would aggravate his condition?

14 A. Yes.

15 Q. Now, your notes jump to May 3rd, 1990, Doctor,
16 and you talk about cervical disc disease. What is cervical
17 disc disease? And I'm referring to a letter to Dr. Rychak.

18 A. Cervical disc disease is any pathology involving
19 the cervical disc. The disc is the cushion between the
20 vertebral bodies and the cervical are in the neck.

21 Q. And can this cervical disc disease be caused by
22 just normal wear and tear on the disc area?

23 A. It can be, yes.

24 Q. Trauma does not have to be -- it's not
25 necessarily always caused by trauma?

1 A. That's correct.

2 Q. Now, we've jumped from 1984 to 1990 in your
3 notes, but in 1990, May 3rd, you indicate that Mr. Perkey
4 is still having numbness in his upper extremities. Is that
5 not correct?

6 A. Yes.

7 Q. And that he wakes up in the morning with
8 numbness in his arms?

9 A. Yes.

10 Q. Now, once again, you make notice of this chronic
11 neck discomfort. Is that correct?

12 A. Yes, that's correct.

13 Q. And you note that Mr. Perkey was involved now in
14 a second motor vehicle accident in 1985?

15 A. Yes.

16 Q. Now, this is now, you've been treating
17 Mr. Perkey for roughly close to eight years?

18 A. Yes.

19 Q. And he's continuing to have the neck discomfort,
20 the right arm discomfort, the headaches, the same symptoms
21 he's had back since 1982, correct, Doctor?

22 A. Yes.

23 Q. Now, in 1990, I believe an MRI of April 10th was
24 performed, correct?

25 A. That's correct.

1 Q. And this was done on the C5-6 area?

2 A. The MRI was done on the entire neck.

3 Q. Okay. What was determined at the C5-6 area?

4 A. There was evidence of disc disease at C5-6 with
5 central osteophyte formation. An osteophyte is a bone spur
6 or disc bulging. Sometimes you can't tell the difference
7 on an MRI whether it's bone or whether it's hard disc. And
8 there was also an eccentric herniation or osteophyte
9 formation on the left side, C5-6.

10 Q. And what is herniation, Doctor, so the jury
11 would understand that?

12 A. The term herniation is also synonymous with a
13 protrusion, a rupture, the different degrees of a disc, the
14 central part of a disc being displaced out of the location
15 in the central part of the disc to a point outside the disc
16 or toward the outside of the disc. There are many
17 different terms that are used. Herniation is one of those
18 terms; rupture, protrusion, slipped, different things.

19 Q. If you have a herniation at the C5-6 area, what
20 type of problems would that cause?

21 A. It can cause pain in the neck; it can cause pain
22 or tingling or numbness in the arm; it can cause weakness
23 in an arm; it can cause pressure on the nerve root or
24 irritation of the nerve root.

25 Q. He also had some problems with his wrists,

1 correct?

2 A. He had problems with his hands.

3 Q. And I believe there was some mention of carpal
4 tunnel?

5 A. That's correct.

6 Q. And that your recommendation was, or there was a
7 recommendation for decompression of the median nerves?

8 A. I recommended at that time that I felt that his
9 carpal tunnel syndrome difficulties were giving him most of
10 his problems with his numbness in his upper extremities. I
11 did not think that he had a clinical radiculopathy
12 associated with his cervical disc disease. That was clear
13 at that point in time.

14 Q. Now, Doctor, you make a mention in this letter
15 that he has a long-standing cervical disc disease with
16 progression since 1983. When you use the word progression,
17 does that mean deterioration?

18 A. Yes.

19 Q. So from 1983 through 1990, his neck is becoming
20 worse, correct?

21 A. Basically that's correct, yes.

22 Q. And at this point, you bring up the first
23 anterior cervical discectomy and fusion, that he may be a
24 candidate in the future for that?

25 A. Yes.

1 Q. And I believe you testified that that was
2 actually then performed at a later date?

3 A. Yes.

4 Q. Okay. Now, as of July 6, 1990, I believe you
5 noted that he continues to have the headaches and the
6 posterior cervical discomfort, once again, associated with
7 the long-distance truckdriving? And I'm referring to the
8 July 6th, 1990 letter to Dr. Rychak.

9 A. Okay.

10 Q. Is that true and correct, Doctor, that as of
11 July 6th, 1990, Mr. Perkey is stating to you that he has
12 continuing headaches and that he's having posterior or pain
13 in the back of the neck, discomfort which he claims
14 associated with long-distance truckdriving?

15 A. That's correct. He had had surgery on his hands
16 since I had seen him before. He was not having the
17 numbness in his hands.

18 Q. Okay. And he elects to have the first surgery?

19 A. Yes.

20 Q. Okay. Now, moving on, on November 6th, 1990,
21 you authored another letter, Doctor. Can you tell us who
22 you authored that letter to?

23 A. Dr. Rychak.

24 Q. Well, let me show you the letter I have, Doctor,
25 November 6th, 1990, and there's also --

1 A. We have two sides of the chart. There may be --

2 Q. Let me show you this one, Doctor. Who is that
3 letter to?

4 A. This is to Marcus A. McKnight, the Third.

5 Q. And what was that letter -- do you remember what
6 that letter was for?

7 A. This was in response to a request, I believe,
8 from Mr. McKnight. I don't have his request as to why I
9 wrote the letter, but I summarized Mr. Perkey's history.

10 Q. Can you tell me -- I'm sorry.

11 A. I discussed with him the surgery that was
12 performed on his neck.

13 Q. I believe you state in that letter, Doctor, that
14 the conditions that Mr. Perkey had been complaining about
15 were aggravated by him driving a truck?

16 A. Yes. He had done well following his neck
17 surgery. I felt, in my final paragraph, that his condition
18 of cervical disc disease was aggravated by his continued
19 jarring associated with his activities in over-the-road
20 long-haul truckdriving resulting in increasing symptoms
21 that lead to the decision to go ahead with surgery. He
22 appears to have had a good result from the recent surgery.

23 Q. Thank you, Doctor. Now, Doctor, on July 8th,
24 1994, it was reported that Mr. Perkey had fallen on some
25 ice in a parking lot on January 31st, 1994? And what I'm

1 referring to, Doctor, is a July 8th letter to Dr. Rychak.

2 A. Yes. I saw him at that point, and he indicated
3 that he had been experiencing difficulties since the end of
4 January when he fell on some ice while he was reaching for
5 the handle of his truck falling backwards.

6 Q. Okay. And since he fell on this ice, I believe
7 you indicate that he's had some pain, or he has been
8 bothered with back and right leg pain?

9 A. That's correct.

10 Q. He's also been bothered, once again, with
11 headaches and shoulder and left arm pain as well as neck
12 discomfort?

13 A. Yes.

14 Q. He, once again, has numbness in his left hand
15 and arm?

16 A. Yes.

17 Q. Now, in that letter, Doctor, you indicate that a
18 CT study of the lumbar spine was done -- and I'm referring
19 to the third paragraph -- where there was a recurrent disc
20 protrusion at L5-S1, but now on the right side. When you
21 mean recurrent, does that mean it's happened for a second
22 time or it came back?

23 A. Yes. That's generally what recurrence means.

24 Q. Okay. And this had happened after he had had
25 surgery in 1992?

1 A. Yes.

2 Q. And he was scheduled to have a second surgery on
3 August 4th, 1994?

4 A. Evidentially that's correct, yes.

5 Q. Okay. Once again, he's got headaches?

6 A. Yes.

7 Q. And he's got numbness in his entire left arm and
8 hand when he sleeps?

9 A. Yes.

10 Q. He has tightness in his neck and some discomfort
11 in his shoulder region as well following this fall on the
12 ice, correct?

13 A. Yes.

14 Q. Now, in 1995, January 27th, 1995, this is the
15 first mention of a C6-7 problem -- or I'm sorry -- that he
16 underwent a left C6-7 partial cervical -- and, once again,
17 forgive me, Doctor -- hemilaminectomy?

18 A. Hemilaminectomy.

19 Q. Okay. What is that procedure, Doctor?

20 A. That procedure is an exposure from a posterior
21 approach to take pressure off a nerve root, localize, in
22 this case, to the left C7 nerve root; and the procedure is
23 called a partial cervical hemilaminectomy and foramenotomy
24 at C6-7.

25 Q. Now, Doctor, we're still close to three years

1 away from the accident that we're talking about today. You
2 make a note that he's had two cervical operations by 1995,
3 I believe, C5-6, C6-7?

4 A. That's correct.

5 Q. And he's also had three lumbar operations,
6 lumbar being the lower back?

7 A. That's correct.

8 Q. And since our accident had not happened yet,
9 there's no way that this could be related to something in
10 the future, correct, that these were symptoms there
11 previously to 1998?

12 A. Yes.

13 Q. And I believe you indicated at this time that
14 you had a discussion with Mr. Perkey about him returning to
15 his previous employment as a truckdriver. What did you
16 tell him about his ability to return as a truckdriver?
17 And, once again, I'm referring to the January 27th note,
18 the second to last paragraph.

19 A. There was a question at that time whether he
20 might have recurrent carpal tunnel syndrome difficulties.
21 I thought he was recovering satisfactorily from his neck
22 surgery, and I note that we did have some discussion with
23 regard to his returning to his previous employment as a
24 truckdriver, which I felt may not be the best thing for him
25 at that time.

1 Q. So you felt at that time he should not return to
2 driving?

3 A. I said I felt it may not be the best thing for
4 him.

5 Q. Okay.

6 A. Again, these are situations where medically
7 there may be, my idea of what might be beneficial or
8 helpful for him, but we deal in the real world of
9 practicality. There may be limited options of what he was
10 able to do, so you have to kind of work with those things.
11 And I'm not always privy to all that information, but I
12 thought at the time it might not be a good idea for him to
13 go back driving a truck.

14 Q. Okay. As of February 13th, 1985, Mr. Perkey,
15 once again, is continuing to have back pain, and I believe
16 that was a phone call that you had taken?

17 A. I indicated, he is continuing to have back pain,
18 yes.

19 Q. Okay. Now, just so the jury's aware of
20 Mr. Perkey's history -- I mean, this is a very, very
21 complicated history, and you recite in your July 24th, 1997
22 letter to Dr. Rychak -- I believe in 1990 you performed a
23 C5-6 surgery, correct?

24 A. That's correct.

25 Q. He then developed problems in his C6-7, which is

1 the area above it. You did surgery in 1995, correct?

2 A. C6-7 is the area below C5-6.

3 Q. I'm sorry. Okay.

4 A. And I did surgery, yes, in 1995.

5 Q. Okay. And also that there were three surgeries
6 to his back done by Dr. Rychak or Dr. Litton?

7 A. Yes.

8 Q. Okay. Now, as of July 24th, 1997, did
9 Mr. Perkey have any exacerbation of back problems and neck
10 problems and headaches as a result of driving or hitting
11 any bumps?

12 A. I made a note at that time that he had been
13 working with a lot of skids at one point after a few days
14 back at work; he was doing a lot of bending and then on
15 Interstate 79, he hit a bump and had an exacerbation of
16 back pain as well as some neck discomfort and headaches.

17 Q. And as a result of this work and hitting this
18 bump, didn't he state to you that he had problems waking
19 up, or that he would wake up at night with tingling and
20 numbness in his hands and arms and that he had recurrent
21 back pain?

22 A. Yes.

23 Q. Okay. Now, you indicate that there's evidence
24 of some disc and osteophyte disease at C6-7. The
25 osteophyte would be the spurring or a bone sticking out.

1 Is that correct, Doctor?

2 A. That's correct.

3 Q. What is bilateral foraminal narrowing?

4 A. Bilateral foraminal narrowing; the foramen is
5 the opening and the bone that the nerve traverses when it
6 comes from the spinal cord to get outside the spine into
7 the soft tissues. So foraminal applies to the foramen or
8 the opening, so foraminal narrowing is narrowing of this
9 opening; bilateral means on both sides.

10 Q. Okay. Thank you, Doctor. Now, October 21st,
11 1997, we're still about a year away from the accident. Was
12 Mr. Perkey having any problems at that time?

13 A. I'm sorry? October --

14 Q. 21st, 1997.

15 A. He was having, it indicated he was having
16 continued difficulties with neck pain aggravated by his
17 driving over rough terrain; he was tolerating this, but
18 generally uncomfortable much of the time.

19 Q. Now, Doctor, you indicated you wanted to get an
20 MRI study, but you couldn't because of a stimulator being
21 in his lumbar fusion, correct, or his lumbar area?

22 A. He had a bone stimulator in his lumbar region,
23 yes.

24 Q. So at this time there was no way to tell with an
25 MRI what was going on at C6-7, correct?

1 A. I'm sorry. Ask that again.

2 Q. Okay. Let's see if I can clarify that. Why did
3 you want to get an MRI study of the C6-7 area?

4 A. I thought there was a question of whether he
5 could be having difficulty because I knew he had disease at
6 C6-7 from his previous surgery, and I wanted to get a
7 picture of that. There was some disagreement as to whether
8 or not he could have an MRI.

9 However, since I don't do MRIs myself, I had to
10 convince one of the radiologists that he could have an MRI,
11 and they didn't seem to understand that this particular
12 type of stimulator was not a contraindication to do an MRI,
13 but to get an MRI scheduled.

14 Q. And, in fact, an MRI wasn't done until after the
15 stimulator was taken out. Is that correct?

16 A. That's correct.

17 Q. So, Doctor, if I'm correct, there is no films to
18 compare before and after the September 15th, 1998 accident.
19 I guess what I'm asking -- let's see if I can clarify that,
20 Doctor. We don't have a pre-September 15th, 1998 MRI of
21 C6-7 taken around the time of 1997 to compare to an MRI
22 that was taken after the stimulator was taken out, correct?

23 A. I'm sorry. You lost me there.

24 Q. The inability to take an MRI because of the
25 stimulator prevents you from having a before and after

1 study to compare what was there before and after the
2 accident, correct?

3 A. Which accident?

4 Q. The September 15th, 1998 accident.

5 A. That's correct. I couldn't remember the exact
6 date when he had the MRI prior to the surgery, but that was
7 after the accident.

8 Q. What is discogenic pain?

9 A. Discogenic applies to arising from a disc.

10 Q. So at this point he has pain that's arising from
11 the disc, I believe is what --

12 A. Arising from the region of a disc, yes.

13 Q. Just so the jury's aware, Doctor, he's having
14 pain from the, in your opinion, having pain from the C6-7
15 area of his spine as of October 21st, 1997?

16 A. Yes.

17 Q. Now, our accident happened September 15th, 1998.
18 You then saw Mr. Perkey October 13, 1998, approximately one
19 month after the accident. Are you aware of how Mr. Perkey
20 left the scene of the accident?

21 A. No, not specifically.

22 Q. Okay. You're not aware if he left in an
23 ambulance or he was driven back to Ohio in a private car?

24 A. I don't have any details about that.

25 Q. How about any treatment done immediately that

1 day or the next day to Mr. Perkey? Did you ever review any
2 of those notes?

3 A. No.

4 Q. Now, I believe prior to this accident, you had
5 indicated that Mr. Perkey may have been a candidate for
6 surgery at the C6-7 level?

7 A. Yes.

8 Q. Okay. So in your October 13th, 1998 letter, you
9 state that there's a prominent bony osteophyte related to
10 the disc pathology at C6-7. That surgery in that area, as
11 you had indicated, you had thought about that previous to
12 the September 15th, 1998 date?

13 A. Yes.

14 Q. Now, you did a physical exam on Mr. Perkey that
15 day, correct?

16 A. Yes.

17 Q. And you tested his upper extremities?

18 A. Yes.

19 Q. And what did you find with his upper
20 extremities?

21 A. I found that he did not have any weakness; there
22 was no atrophy.

23 Q. What is atrophy, Doctor?

24 A. Atrophy is a wasting away of muscles indicating
25 kind of a chronic type of effect on nerves and muscles. He

1 did have some diminished sensation with pinprick testing
2 over the medial forearm regions, including the small and
3 ring finger of each hand.

4 Q. What about -- is it palpation, Doctor? What did
5 you find when you did that? You indicate there's minimal
6 soreness with palpation over the greater occipital nerve on
7 each side; no significant localized tenderness at present.
8 What does that mean, Doctor?

9 A. In some cases with chronic neck symptoms and
10 difficulties if someone has trauma to the back of their
11 head, they can develop a pain related to nerves that comes
12 up, you know, in the back of the head called the greater
13 occipital nerve; and I was just testing to make sure he
14 didn't have occipital neuralgia or tenderness related to
15 that particular separate condition.

16 Q. And you didn't find anything, correct?

17 A. No.

18 Q. When you did an examination of Mr. Perkey's
19 cervical ability to extend and rotate, what did you find
20 there?

21 A. I felt that he described discomfort with
22 rotation of the cervical spine toward the right side, but
23 he did not have too much difficulty with cervical extension
24 and rotation toward either side.

25 Q. Now, Doctor, when you do an examination, the

1 first thing you want to get is the person's subjective
2 complaints, correct?

3 A. That's correct.

4 Q. And that's what he's telling you the problems
5 are?

6 A. That's correct.

7 Q. And then you move into objective, where your
8 physical examination, what you find to be true, correct,
9 Doctor?

10 A. Yes.

11 Q. And that's what you're describing here, your
12 objective findings?

13 A. Yes.

14 Q. Now, as of April 15th, 1999, you, once again,
15 authored a letter to Dr. Rychak. Once again, is it true
16 that you found that he did not have any, Mr. Perkey did not
17 have any specific weakness in his upper extremities, his
18 upper arms?

19 A. Yes.

20 Q. Okay. And that he had full range of motion in
21 his cervical area or his neck?

22 A. I felt that he had fairly full cervical range of
23 motion with slight limitation with extension and with
24 lateral cervical rotation toward either side.

25 Q. Okay. Now, Doctor, you indicate that Mr. Perkey

1 has a documented condition of cervical spondylosis with a
2 solid fusion at C5-6. That did happen prior to our
3 accident, correct?

4 A. That's correct.

5 Q. And evidence of spondylosis with bilateral
6 foraminal narrowing at the C6-7 relating to disc
7 degeneration and osteophyte formation, correct?

8 A. That's correct.

9 Q. What is disc degeneration?

10 A. It's degeneration of the discs.

11 Q. Well, once again, this could be caused by just
12 natural, normal wear and tear?

13 A. It can be, yes.

14 Q. How about osteophyte formation?

15 A. This is a bone spur that forms as a reaction to
16 degeneration.

17 Q. And do you treat patients, Doctor, that have
18 this disc degeneration and osteophyte formation that have
19 not been involved in any type of trauma?

20 A. Yes.

21 Q. Now, Doctor, you had testified on October 28th,
22 1999 you had been asked to give a second opinion regarding
23 Mr. Perkey's lower back problems. Do you remember
24 testifying to that?

25 A. Yes.

1 Q. Okay. And that I believe you indicated in your
2 opinion, Doctor, there does not seem to be any structural
3 pathology at this point in the lumbar region which would
4 account for his mechanical back pain. What do you mean by
5 mechanical back pain?

6 A. The term mechanical back pain is used to
7 describe back pain that's predominantly described by the
8 patient as localized pain aggravated with various
9 activities, in other words, mechanical factors of; in other
10 words, walking, standing, bending, lifting, twisting make
11 the back pain worse.

12 And it's localized back pain, and it doesn't
13 really generally involve radicular pain or pain radiating
14 down the legs or sciatica; it's pain in the back that seems
15 to be worse associated with weight bearing and activity.
16 That's kind of a general understanding of mechanical back
17 pain.

18 Q. Okay. And what's pathology or structural
19 pathology?

20 A. Structural pathology, when I use that term, it's
21 some type of abnormal anatomy or disease that specifically
22 would cause something like mechanical back pain. In other
23 words, there was no ruptured disc; there was no stenosis;
24 there was no problem there that we could see structurally
25 that would cause back pain.

1 The same with migraine headaches, there's no
2 structural pathology you can see when somebody has a
3 migraine headache. It doesn't mean they don't have a
4 headache. It's not a structural thing that we can -- in my
5 case, I was looking to see is there any indication for any
6 type of further surgery. Because of structural disease, I
7 did not feel there was.

8 Q. Okay. Now, Doctor, on October 11th, 2000, you
9 were asked about that. Now we're talking two years past
10 this accident. The C3-4, C4-5, this is the first time that
11 this popped up. Is that correct?

12 A. That's correct.

13 Q. You had no mention of any problems with the
14 C3-4, C4-5 prior to October 11th, 2000?

15 A. That's correct.

16 Q. And just so the jury's aware, this is now two
17 years after the accident?

18 A. Yes.

19 Q. Also you make an indication that Mr. Perkey is
20 having no new medical difficulties?

21 A. Yes.

22 Q. Doctor, when you do an MRI study, you do it over
23 the whole neck area, correct, when you're doing an MRI of
24 the neck?

25 A. I don't do the MRI. When I request an MRI

1 study, it's a study that's performed and usually includes
2 the entire neck.

3 Q. Had there been a previous problem with C3-4,
4 C4-5 in previous MRIs, you would have made a note of that,
5 correct, Doctor?

6 A. Yes.

7 Q. Now, you had also testified about when a person
8 has surgery at the lumbar area, it can have an effect on
9 the cervical area with the stenosis?

10 A. I don't believe I said that, no.

11 Q. I believe you testified that stenosis, in the
12 majority of cases, you find to be a genetic condition?

13 A. I think probably there is some genetic basis for
14 many cases of spondylosis and stenosis, which is a
15 degenerative condition.

16 Q. So, Doctor, Mr. Perkey's spondylosis and
17 stenosis could be a genetic condition?

18 A. Could be.

19 MR. GODFREY: I have no other questions.

20 **REDIRECT EXAMINATION**

21 BY MR. MCKNIGHT:

22 Q. I just have a few follow-ups. As you've
23 outlined to the jury, you've treated Mr. Perkey for a
24 number of years?

25 A. Yes.

1 Q. How would you describe him as a patient in
2 general? Is he cooperative; is he hard to deal with; does
3 he respond to your recommendations? Well, how would you
4 describe him?

5 A. Generally John has been a very cooperative
6 individual. He's been -- for someone who's had
7 difficulties for this many years with chronic discomfort, I
8 would say that probably the majority of patients I treat
9 with these kinds of problems do not keep going back and
10 trying to work and have the attitude that he's had to try
11 to function and try to persevere -- he's been cooperative.

12 I've never had any question with regard to his
13 examinations of trying to malingering or try to -- sometimes
14 patients with chronic pain, their examination shows
15 inconsistencies. His has never showed any inconsistencies.
16 He's always demonstrated full cooperation and effort with
17 some chronic painful conditions.

18 This persona of his is one where, over many
19 years, you come to treat someone and you tend to believe
20 them when something is very different as opposed to chronic
21 symptoms. I've never had any indication or any reason to
22 feel that he was not being straightforward, I guess. He's
23 been a chronic, obviously long-term situation; many
24 operations, many of which were not performed by myself.

25 Q. So when he came to you in October of 1998 and

1 you examined him then, you knew that he had been driving a
2 truck for some time. Is that correct?

3 A. Yes, he was driving a truck. I don't --

4 Q. And although you'd examined him twice in '97 and
5 he had chronic pain because of his truckdriving, he was
6 still functional, is that correct, in '97?

7 A. Yes.

8 Q. And then he came to you in October of 1998, and
9 he indicated that now something was different?

10 MR. GODFREY: I'm just going to object. These
11 questions are of a leading nature.

12 BY MR. MCKNIGHT:

13 Q. You can answer.

14 A. Yes.

15 Q. And how would you describe the difference, in
16 other words, Doctor, the difference that you saw in him
17 when you saw him in October of '98 from when you had
18 examined him earlier in '97?

19 MR. GODFREY: Objection. It's outside the scope
20 of cross.

21 BY MR. MCKNIGHT:

22 Q. You can answer, Doctor.

23 A. He was describing more pain, he was having more
24 pain. He didn't think he could function at that point as a
25 truckdriver.

1 Q. And were his complaints consistent then with
2 your examination?

3 A. Yes.

4 Q. Okay. And then you recommended the surgery that
5 had been discussed before but not done before, but you then
6 went ahead and did the surgery at that point. Is that
7 correct?

8 A. Yes.

9 MR. GODFREY: Objection. Once again, it's
10 leading.

11 BY MR. MCKNIGHT:

12 Q. Okay. And you described how it had been
13 delayed, and ultimately it was done in May of '99?

14 A. Yes.

15 Q. And how would you describe his recovery from
16 that surgery?

17 A. Generally his recovery was fairly good. I had
18 indicated in previous testimony, I think he did have a
19 little trouble swallowing for a period of time, which
20 resolved and got better. He indicated in June that his
21 headaches were much better and the tingling and numbness in
22 his upper extremities was resolved, so generally I think he
23 recovered fairly well from that surgery.

24 Q. Okay. And then in October of 2000 about two
25 years after the accident, you performed a second surgery.

1 Is that correct?

2 A. That's correct.

3 Q. And this time it was on C3-4, C3-5?

4 A. It was C3-4 and C4-5 or the level where there
5 was stenosis. This was a procedure performed from a
6 different approach, from the posterior approach.

7 Q. Now, counsel has asked you about some of the
8 causes, the underlying causes of that. What are other
9 causes of those sort of conditions? You didn't see them
10 before, you saw them then, and you performed surgery on
11 those levels. What could cause that change?

12 A. Well, one of the things that can occur when you
13 fuse a motion segment, when you fuse a level in the spine,
14 it does create a slightly greater leverage and can cause
15 what are called junctional problems at the levels above and
16 below.

17 Q. And is that what we're seeing in Mr. Perkey's
18 case?

19 A. It may be. He had two levels fused, and he may
20 have developed difficulties that certainly could have
21 contributed to the changes at the levels above at that
22 point.

23 Q. And those junctions that you described were
24 above the areas fused. Is that correct?

25 A. That's correct.

1 Q. So there's no indication in Mr. Perkey's case
2 that he had any sort of genetic problem that caused these
3 conditions in those areas, in those levels?

4 MR. GODFREY: Objection. Again, that is
5 leading.

6 THE WITNESS: My previous comments with regard
7 to genetic, that's my belief. I think probably most
8 problems that people develop are going to be found to be
9 related as we understand the genetic human geno better.
10 The question is why do people develop problems. I think
11 there's probably some genetic basis for a lot of these
12 conditions. If you have a condition and then something
13 happens to aggravate it, that's another factor.

14 BY MR. MCKNIGHT:

15 Q. Okay. And you also indicated that when you did
16 the second surgery in October, you removed a screw from the
17 first surgery?

18 A. That's correct.

19 Q. Now, on occasion in your testimony and in your
20 notes, you indicate that there were times when you were
21 recommending that Mr. Perkey not drive a truck, and on one
22 occasion you recommended dock work or light duty. Isn't it
23 true though, Doctor, when he would improve, he would return
24 eventually to his driving duties?

25 MR. GODFREY: I object that it's leading, again.

1 THE WITNESS: That seems to be the pattern, yes.

2 MR. MCKNIGHT: Okay. That's all the questions I
3 have.

4 MR. GODFREY: No questions. Thank you, Doctor.

5 (Whereupon, the deposition was concluded at
6 5:08 p.m.)
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1 COMMONWEALTH OF PENNSYLVANIA)
2 COUNTY OF CUMBERLAND) SS.
3)

4 I, JENNIFER L. SIROIS, a Court
5 Reporter-Notary Public authorized to administer oaths and
6 take depositions in the trial of causes, and having an
7 office in Carlisle, Pennsylvania, do hereby certify that
8 the foregoing is the testimony of **ROGER H. OSTDAHL, M.D.**

9 I further certify that before the taking of
10 said deposition the witness was duly sworn; that the
11 questions and answers were taken down stenotype by the said
12 Reporter-Notary, approved and agreed to, and afterwards
13 reduced to computer printout under the direction of said
14 Reporter.

15 I further certify that the proceedings and
16 evidence are contained fully and accurately in the notes
17 taken by me on the within deposition, and that this copy is
18 a correct transcript of the same.

19 In testimony whereof, I have hereunto
20 inscribed my hand this 14th day of March, 2003.

21
22 NOTARIAL SEAL
23 JENNIFER L. SIROIS, Notary Public
24 Camp Hill, Cumberland County, PA
25 My Commission Expires Mar. 21, 2005

Notary Public

CERTIFICATE OF SERVICE

AND NOW, this 17th day of May, 2003, I, E. Ralph Godfrey, Esquire, of Godfrey & Courtney, P.C., attorneys for Defendants Reliable Carriers, Inc. and Daniel Joseph Bemben, hereby certify that I served the foregoing Motion in Limine this day by depositing the same in the United States mail, postage prepaid, in Harrisburg, Pennsylvania, addressed to:

Marcus McKnight, Esquire
Mark D. Schwartz, Esquire
Irwin, McKnight & Hughes
60 West Pomfret Street
Carlisle, PA 17013

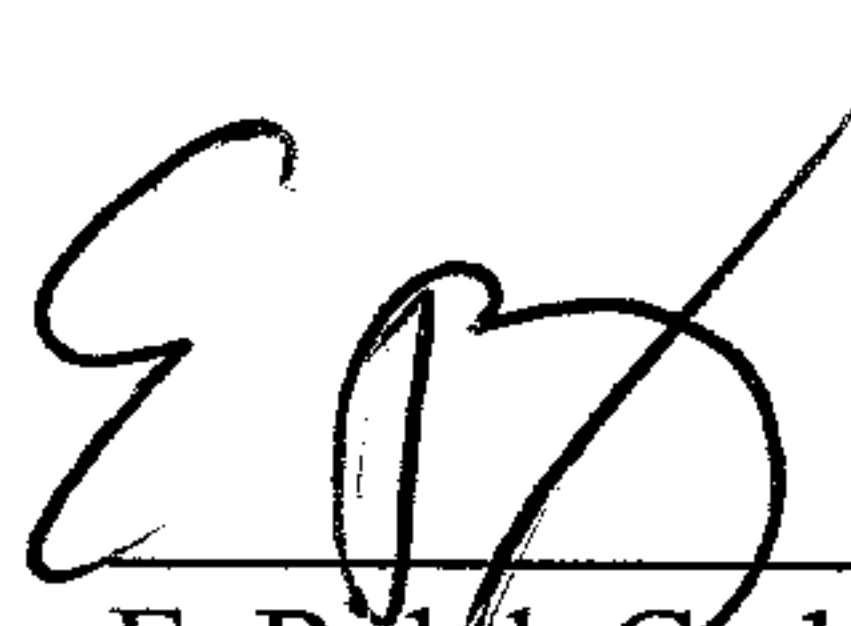


E. Ralph Godfrey

CERTIFICATE OF SERVICE

AND NOW, this 19th day of May, 2003, I, E. Ralph Godfrey, Esquire, of Godfrey & Courtney, P.C., attorneys for Defendants Reliable Carriers, Inc. and Daniel Joseph Bemben, hereby certify that I served the foregoing Motion in Limine this day by depositing the same in the United States mail, postage prepaid, in Harrisburg, Pennsylvania, addressed to:

Marcus McKnight, Esquire
Mark D. Schwartz, Esquire
Irwin, McKnight & Hughes
60 West Pomfret Street
Carlisle, PA 17013



E. Ralph Godfrey